

FILED  
U.S. Bankruptcy Court  
WDNC, Charlotte, NC  
**DEC 11 2002**  
Geraldine Neutelaar  
Crockett, Clerk  
/gg

In Re: ) Case No. 02-32905  
 )  
 ) Chapter 11  
 )  
 DOWNS & ASSOCIATES, LTD., )  
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 )  
 Debtor(s). ) **JUDGMENT ENTERED ON DEC 11 2002**  
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This matter is before the court on two Applications for Fees and Expenses filed by debtor's attorneys, and the Objection to each filed by the Bankruptcy Administrator. For the reasons stated below, the court has concluded that fees and expenses totaling \$18,573.30 should be awarded on the two Applications.

1. The debtor's voluntary Chapter 11 reorganization petition was filed by counsel on September 13, 2002.

2. Debtor's attorneys' applications for fees and expenses and expenses were filed October 11 (for September) (\$9970.50 fees; \$850.00 expenses), and November 6 (for October) (\$9635.50 fees; \$371.90 expenses), 2002. The Bankruptcy Administrator timely objected to each Application on a number of grounds.

3. The debtor is a personnel business. At the time its petition was filed the debtor could not fund its next payroll. Its assets consisted of some used office equipment and the goodwill of its principal (who was ill and unable to contribute fully to the operation of the business). In substantial part through the

efforts of its attorneys, the debtor has remained in operation and has contracted for a sale of its business that should pay a substantially greater dividend to its creditors than likely could have been obtained absent the efforts in this Chapter 11 case.

#### Discussion

4. The standard for awarding compensation to the debtor's attorneys is set out in 11 U.S.C. § 330(a)(1): (A) "reasonable compensation for actual, necessary services rendered" and (B) "reimbursement for actual, necessary expenses."

5. As guidance Section 330(a)(3) further provides that:

In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including -

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue or task addressed; and
- (E) whether the compensation is reasonable based on the customary compensation charged with comparably skilled practitioners in cases other than cases under this title.

6. In addition to the statutory guidelines, this court, in consultation with the Bar and the Bankruptcy Administrator, has adopted "guidelines" which are designed to aid counsel in proper time-keeping and application for fees.

7. All of the "guidelines" notwithstanding, the ultimate statutory standard is the "reasonable fee." That standard is necessarily vague and is not susceptible to a mechanical application in all cases.

8. The court believes that this case is somewhat unusual because the efforts of counsel appear to have produced significant dividends for creditors in a relatively short time. The fees requested to date total less than ten percent of the apparent dividend for creditors. Consequently, deficiencies that might be fatal to a fee application in other circumstances are somewhat compensated for here by the result obtained by counsel, and the efficiency in which it was obtained. Bearing that aberration in mind, the court will address the Bankruptcy Administrator's specific objections seriatim:

9. *Hourly Rate:* Counsel's billing rate is \$345 per hour. The court finds that to be within the range of rates charged by comparable attorneys in this community for representation in Chapter 11 business reorganization cases. The Bankruptcy Administrator submitted a survey of attorneys with hourly rates less than \$345 per hour. Debtor's counsel submitted a list of attorneys, most of whose rates were above that. Perhaps the most comparable attorney on the Bankruptcy Administrator's list charges \$320 per hour in a community where overhead is a good deal less than in this one. The court is not persuaded that there is any

significance to the fact that a number of attorneys on debtor's list have not appeared in this court recently. It is a fact of bankruptcy life that much Chapter 11 business reorganization work is performed in conference room "workouts" (or, if in court, in Delaware). In fact, § 330(a)(1)(E) demonstrates that such a narrow field of inquiry is improper ("the court shall consider...(E)...customary compensation...in causes other than cases under this title").

10. In short, the two surveys demonstrate that there is a significant range of hourly rates charged in this community and that debtor's counsel's rate is within that range. Debtor's counsel is one of the most experienced and able attorneys in this community in representation of debtors in business reorganizations. The court finds his rate of \$345 per hour to be reasonable. Counsel had limited his fee to \$325 per hour in his fee disclosure and has conceded to that limitation. That results in a \$292 reduction in the fee requested.

11. *Preparation of Schedules and Statements:* Following the filing of the petition, counsel filed a number of supplements and amendments. Some of this extra effort was beyond counsel's control -- this was an emergency filing and the debtor was in some disarray; and filing the petition electronically introduced some additional burdens. But, some of this extra effort was unnecessary and its cost should not be borne by the estate. It is the court's

judgment that debtor's counsel should be compensated for only one-half of the time devoted to filing the petition, schedules and statements. That requires a reduction in the fee requested of \$ 567.25.

12. *Description of Services:* In In re Kolortex, 3:96CV22-MU, the District Court stated that "Counsel in the Western District of North Carolina are hereby placed on notice that a petition for attorney's fees and expenses pursuant to 11 U.S.C. Section 330(a) should contain sufficient detail to permit a meaningful evaluation by the court." The court finds counsel's description of services to be adequate. With only occasional exception, each entry contains a general description of its subject matter sufficient for the court to determine what work was done and whether it related reasonably to the debtor's reorganization. In Kolortex, the description of services deemed inadequate were in the nature of "Telephone conference with Don House; telephone conferences with client...." Here, the service entries describe in general terms what the conferences, telephone conversations, research and the like were about. There are no indications of churning, bloating or other abuses that might require scrutiny. The descriptions in the fee applications are sufficient for the court to determine the nature and purpose of the work done and to evaluate its benefit to the estate. Consequently, the time entries contained in debtor's

counsel's applications are sufficient, and no reduction of the fee requested is necessary on that account.

13. *Lumping*: Some of counsel's time entries "lump" together a variety of different services performed on the same day. "Lumping" does not per se render a time entry defective. But, where services that are not compensable are lumped together with otherwise compensable services, it may be impossible to unscramble the two; and in that case, the entire entry would be non-compensable. That result is required here in the case of entries lumped together with services for the "removal action." It appears that an undue amount of time may have been devoted to the "removal" matter, but that cannot be determined with any certainty because entries are "lumped" with other services. But, further, this is not a situation where the removal efforts were wholly unnecessary (they resulted ultimately in a favorable settlement), -- just that there appeared to be some wheel spinning over the procedure. Because all of the lumped services were necessary and beneficial to the estate, the court believes that a fair determination is to award fees for one-half of the time that is lumped with "removal" efforts. That requires a reduction in the fees requested of \$1,395.25. The court is not inclined to disallow other time entries that are lumped because there is no indication that the time was not necessary and beneficial to the estate. Considering the overall reasonableness of the fee requested, the court finds no

basis here to disallow the lumped time entries solely because they are lumped

14. *Fee Objection:* Counsel is entitled to compensation for defending its fee applications. Section 330(a) of the Bankruptcy Code does not prohibit compensation for services performed in defense of fee applications. *Smith v. Edwards & Hale, Ltd. (In re Smith)* 305 F.3d 1078, 1088 (9<sup>th</sup> Cir. 2002). Where a challenge to a fee application is successfully defended, failing to grant fees for such defense will dilute compensation for "actual and necessary services" in violation of Section 330(a). *Id.* at 1088, 1089. While there appears to be some difference of opinion among the Circuits and it further appears that there is no controlling authority from the Fourth Circuit, the court is inclined to follow the reasoning of the Ninth Circuit in *Smith v. Edwards & Hale, Ltd. (In re Smith)*.

15. While parts of the Objection to Fee Application and Expenses have been sustained, the fee applications has in substantial part been supported. Given the overall reasonable ness of the fees requested, the court does not deem it necessary to apply a sharp pencil to the litigation costs in this case. Consequently, debtor's attorneys' entries for services connected with preparation of and defense of their fee applications are compensable. No reduction in the fee request is merited on this account.

16. *Duplication:* The court has found no unnecessary duplication of effort in these applications. Anytime two people work on a project, there will be some overlap. The services here appear to have been delivered effectively and with no unnecessary duplication. No reduction of the fee requested is merited on this account.

17. *Miscellaneous:* A number of other items were addressed at the hearing on these applications. The court finds that those items were not of sufficient consequence to merit reduction of the fee requested.

18. There has been no challenge to the expenses and they appear reasonable. They are compensable as requested.

19. In summary, a total of \$ 19,606.00 in fees and been requested in the two applications at issue. The court has determined that the following reductions are merited:

- hourly rate = \$292
- schedules and statements = \$567.25
- lumping = \$1,395.25

Total Reduction = \$2,254.50

So, on the two present applications the court awards \$17,351.50 in fees and \$1,221.80 in expenses for a grand total payable to debtor's attorneys of \$18,573.40.

It is therefore **ORDERED** that:



1. The Bankruptcy Administrator's Objections are sustained in part;

2. Debtors' attorneys are entitled to be paid \$18,573.30 for fees and expenses in Applications dated October 11, 2002 and November 6, 2002;

3. The debtor is authorized to pay its attorneys consistent with this Order; and

4. Notwithstanding any of the above, this is an interim fee Order, and is subject to adjustment prior to closing the case.

  
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George R. Hodges  
United States Bankruptcy Judge